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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/669,382 | 09/26/2000 | Kevin Lyraugh | 80113-0070 | 3376 |

7590 11/29/2002

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EXAMINER

WEST, JEFFREY R

ART UNIT PAPER NUMBER

2857

DATE MAILED: 11/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/669,382

Applicant(s)

LYNAUGH ET AL.

Examiner

Jeffrey R. West

Art Unit

2857

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 November 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) The period for reply expires ____ months from the mailing date of the final rejection.
b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: ____.

3. Applicant's reply has overcome the following rejection(s): ____.
4. Newly proposed or amended claim(s) ____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: ____.

Claim(s) objected to: ____.

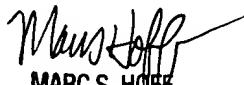
Claim(s) rejected: ____.

Claim(s) withdrawn from consideration: ____.

8. The proposed drawing correction filed on ____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). ____.

10. Other: ____.



MARC S. HOFF
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

Applicant argues the rejection of claims 1, 2, 5-14, and 22-25 under 35 U.S.C. 112, first paragraph, and similarly the rejection of claims 1, 2, 5-14, and 22-25 under 35 U.S.C. 101. The Examiner maintains this rejection for the following reasons:

Applicant argues that the instant disclosure is enabling to one having ordinary skill in the art as how to estimate the input power value because "one input power is associated with each set of frequency and AGC accumulator values. Figs. 5 and 6 clearly show this. For any given accumulator value (vertical axis) and frequency value (Frequency axis), the graph gives a single corresponding input power level value (amplitude axis)." The Examiner disagrees with this analysis. Figures 5 and 6 show that an input power level value may correspond to a given accumulator value and frequency value. Using a similar example as was presented in the final Office Action, a frequency value of 140 and an accumulator value of 0 would correspond to an amplitude value of 0, however, a frequency value of 140 and an accumulator value of 250 would not correspond to any amplitude value. Since the amplitude values of interest are those of data interpolated between two known points, and the relationship between the values is not completely linear (as shown in Figures 5 and 6), one cannot assume that an amplitude value will correspond to the measured inputs. Claims 1 and 22 recite, respectively, "[a] method for estimating input power in a cable modem" and a device "used to compute input power to the receiver" which, as described above, are not sufficiently explained by the specification. For this reason, it remains unclear to one having ordinary skill in the art how to use the claimed invention. Similarly, since these features are the function of the invention, the claimed invention also remains inoperative.